

House Bill 26  
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Presented by Bob Lane  
House Fish, Wildlife & Parks

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FILE 26

Chairman Van Dyk and committee members, I am Bob Lane, Chief Legal Counsel of Montana Department of Fish, Wildlife & Parks (FWP).

FWP does not support HB 26 because HB 190 is the better bill and because HB 26 does not actually solve the problems for public access that are created by some fences.

HB 26 is much more complicated than HB 190 with a detailed process that is unnecessary. The collaborative product of HB 190 demonstrates that there is a simpler and more direct way to provide for the needs of recreationists, landowners, and counties. It is also the superior vehicle because it is the solution that all three interests have agreed best addresses the potential problems for public passage when fences are attached to bridge abutments.

It is important to understand that HB 26 falls short of actually solving the only real and critical issue. That issue is how to deal with fences that impede public access to streams and rivers. Under HB 26 the burden is on counties to address public passage or access through fences. However, the bill fails to require that public passage be provided through fences that are a barrier or a restriction. Instead, the effect of the bill is to give each county the discretion not to provide public passage. This divides one state-wide problem into 56 potential problems.

Further, although this may not be the intention of the bill, it does not require public passage through fences that are barriers. It only requires counties in addressing controversy over public access at a county bridge, to "take any action necessary." Section 2, subsection (2)(a) on page 1. For new fences, county commissioners "may impose reasonable requirements on the fence." Section 3, subsection (2), page 2. For old non-legal fences, the public can portage around the fence. Section 3, subsection 3, page 2. If the fence is a barrier, there is no way to get around the fence because the fence blocks the right-of-way. County commissions are directed to address proposals "to improve or enhance recreational areas" in Section 4 on pages 2 and 3, but the language falls short of requiring public passage.

Whether this lack of a specific requirement for public passage through a fence that is a barrier is intentional or not, it is there.

Further, the collaborative group, representing all interest, found that a detailed hearing and appeal process is not needed. This is not rocket science. It is as simple as a gate, stile, or PVC pipe, etc. paid for and constructed by FWP and others, not the landowner.

FWP does not mean to be overly negative about the efforts of Representative Peterson. In fact, FWP respects his efforts and our comments need to be taken with the understanding that they are made respectively.

In summary, FWP opposes HB 26 and supports HB 190 because HB 190 solves the potential problems or issues in the most simple, unfettered, and direct way.